

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARY ARLENE GOMEZ,

Plaintiff,

v.

KITSAP COUNTY, et al.,

Defendants.

CASE NO. C17-5007BHS

ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS

This matter comes before the Court on Defendant Kitsap County Sheriff Department's (the "Sheriff's Department") motion to dismiss (Dkt. 8). The Court has considered the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

**I. PROCEDURAL HISTORY**

On January 6, 2017, the Defendants in this matter removed the proceedings from Kitsap County Superior Court to this Court. Dkt. 1. Plaintiff Mary Arlene Gomez ("Plaintiff") has raised claims of assault, battery, outrage, negligent infliction of emotional distress, excessive force, false imprisonment, negligence, and violations of 42 U.S.C. §§ 1983 and 1985. Dkt. 1-2 at 4–5.

1 On February 1, 2017, the Sheriff's Department moved to dismiss for failure to  
2 state a claim. Dkt. 8. Plaintiff did not respond.

## 3 II. DISCUSSION

4 Motions to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil  
5 Procedure may be based on either the lack of a cognizable legal theory or the absence of  
6 sufficient facts alleged under such a theory. *Balistreri v. Pacifica Police Department*, 901  
7 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the  
8 complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295, 1301  
9 (9th Cir. 1983). To survive a motion to dismiss, the complaint does not require detailed  
10 factual allegations but must provide the grounds for entitlement to relief and not merely a  
11 "formulaic recitation" of the elements of a cause of action. *Bell Atlantic Corp. v.*  
12 *Twombly*, 127 S. Ct. 1955, 1965 (2007). Plaintiffs must allege "enough facts to state a  
13 claim to relief that is plausible on its face." *Id.* at 1974. When deciding a motion to  
14 dismiss, the Court's consideration is limited to the pleadings. Fed. R. Civ. P. 12(d).

15 In this case, the Court agrees that Plaintiff fails to state a claim against the  
16 Sheriff's Department. The Sheriff's Department is not a legal entity capable of being  
17 sued under § 1983. *See Monell v. Dep't. of Social Servs.*, 436 U.S. 658, 690 (1978);  
18 *McCloud v. Pierce Cty. Sheriff Dep't*, 2016 WL 3675904, \*5 (W.D. Wash. June 6, 2016);  
19 *Wright v. Clark County Sheriff's Office*, 2016 WL 1643988, \*2 (W.D. Wash. April 26,  
20 2016). Instead, the proper party is Kitsap County. Because the Sheriff's Department is  
21 not a party and Kitsap County is also named as a defendant, the Court dismisses the  
22 Sheriff's Department from this action.

**III. ORDER**

Therefore, it is hereby **ORDERED** that the Sheriff's Department's motion to dismiss (Dkt. 8) is **GRANTED** and Plaintiff's claims against the Sheriff's Department are **DISMISSED**.

Dated this 28th day of February, 2017.



BENJAMIN H. SETTLE  
United States District Judge